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22 IN THE UNITED STATES DISTRICT COURT
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24 FOR THE NORTHERN DISTRICT OF CALIFORNIA
25
26 SAN JOSE DIVISION

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28 IN RE: HIGH-TECH EMPLOYEE
ANTITRUST LITIGATION

ALL ACTIONS

Master Docket No. 11-CV-2509-LHK

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT**

Date: April 8, 2013
Time: 10:00 a.m.
Courtroom: 8, 4th Floor
Judge: The Honorable Lucy H. Koh

1 The parties submit this joint statement for the April 8, 2013 Case Management
 2 Conference setting forth proposed changes to the case schedule in ECF 282. This proposed
 3 schedule achieves the April 2014 trial date noted by the Court at the March 13 CMC while
 4 providing time for supplemental expert reports and briefing in light of the schedules of the parties
 5 and their experts, and the significance of the issues.

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7 Plaintiffs' Supplemental Expert Reports and
 8 Supplemental Class Certification Brief: May 17, 2013
 9 Defendants' Supplemental Expert Reports and
 10 Supplemental Opposition: June 28, 2013
 11 Plaintiffs' Supplemental Reply Brief: July 19, 2013
 12 ADR: by July 26, 2013
 13 Hearing on Class Certification: August 9, 2013
 14 Plaintiffs' opening expert reports: October 15, 2013
 15 Defendants' expert reports: November 12, 2013
 16 Plaintiffs' reply expert reports¹: November 26, 2013
 17 Expert discovery cutoff: December 6, 2013
 18 Rule 56/related *Daubert* Motions: December 20, 2013
 19 Oppositions: January 24, 2014
 20 Replies: February 14, 2014
 21 Hearing on Rule 56/related *Daubert* motions: February 28, 2014
 22 Pretrial Conference: April 17, 2014
 23 Trial: April 29, 2014

24 The only issue on which the parties disagree is whether plaintiffs may submit a reply
 25 expert report on class certification when they file their supplemental reply brief.
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28 ¹ By agreement, reply reports must be limited to true rebuttal and should be very brief. They
 should not add new material that should have been placed in the opening report.

1 **Plaintiffs'** position is as follows: Defendants oppose allowing Plaintiffs to respond to
2 criticisms of their amended expert opinions. Plaintiffs respectfully submit that this makes no
3 sense. If in their Supplemental Opposition Defendants raise new expert criticisms, Plaintiffs
4 believe they should be allowed to submit an expert response addressing them. Plaintiffs strongly
5 disagree with Defendants' characterization of their prior expert rebuttal report. The rebuttal
6 merely responded to Defendants' expert's criticisms, including by showing with data why they
7 were unfounded. This is the purpose of rebuttal, lest the Court be left with the erroneous
8 impression that the criticisms could not be answered..

9 **Defendants'** position is that five rounds of expert reports on class certification will be
10 enough and that a sixth round – which would be the fourth report by Dr. Leamer – is unnecessary
11 and inconsistent with this Court's approach.

12 At the October 26, 2011 CMC, the Court explained to plaintiffs, using damages as an
13 example: "You do the opening report, they do the rebuttal, you'll get to do depositions of each
14 other's experts." (Dkt. 94 at 67:10-12.). This approach, without reply reports, makes sense for the
15 class certification issues, especially given the three rounds that have already occurred and the two
16 additional rounds requested by the Court. Last time, plaintiffs submitted a 66-page "reply" report
17 by Dr. Leamer which contained another regression analysis that defendants did not have an
18 opportunity to respond to. This time, any regressions or other statistical analyses that Dr. Leamer
19 believes are appropriate should be included in his upcoming report and not saved for a reply
20 report to which defendants cannot respond.

21 At the CMC on March 13, 2013, the schedule outlined by the Court provided for only two
22 rounds of additional expert reports: an amended report by plaintiffs and a rebuttal report by
23 defendants, with no reply report by plaintiffs. Tr., 3/13/13 CMC, 9:23-9:18. Defendants'
24 proposal follows that approach.

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1 Dated: April 8, 2013

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8 **ATTESTATION:** Pursuant to General Order 45, Part X-B, the filer attests that
9 concurrence in the filing of this document has been obtained from all signatories.

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